



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

LCC:1c

Docket No. 4109-99

28 September 1999

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Review of Naval Record

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Ltr verifying weight status
(3) Limited Duty Board Report
(4) CMC memorandum 1400/3 MMPR-2 of 6 August 1999
(5) Microfiche records

1. Pursuant to the provisions of reference (a), subject, hereinafter, referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show he was promoted to staff sergeant, paygrade E-6, from the 1997 Staff Sergeant Promotion Board.

2. The Board, consisting of Mses. Newman, Taylor, and Mr. Flood, reviewed Petitioner's allegations of error and injustice on 21 September 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and justice, finds as follows:

a. Petitioner was assigned to the Marine Corps Recruiting Station, Lansing, Michigan as a recruiter.

b. On 21 May 1997 he was hospitalized at Hurley Medical Center, Flint, MI and was released on 29 May 1997 with a diagnoses of depression, major, single episode.

c. On 2 June 1997 he was placed on limited duty for six months due to his diagnosis.

d. On 11 July 1997 Petitioner's limited duty status was changed from limited duty to sick in quarters (SIQ) and he

remained in that status until 29 October 1997 when he returned to full duty.

e. On 29 September 1997, Petitioner received official notification of his selection to the grade of staff sergeant by the 1997 Staff Sergeant Selection Board, and was scheduled to be promoted on 1 November 1997.

f. Despite his limited duty and SIQ status, Petitioner's command summoned him from his home on 20 October 1997 and placed him on a weight scale. After spending five months in a limited duty/SIQ status, he weighed in at 205 pounds (max 197) and his body fat measured at 23%. See enclosure (2).

g. To help Petitioner overcome his depression, he was placed on the antidepressant bupropion. This medication causes 13.6% of patients using it to gain weight. He was also placed on fluoxetine, a drug also known to cause weight gain. Petitioner has attached to his application statements from two doctors to support the theory and reason for his weight gain.

h. On 23 October 1997, his commanding officer, submitted a letter to the Commandant of the Marine Corps, MMPR-2, recommending that Petitioner's promotion to staff sergeant be **withheld** for six months for failure to meet Marine Corps height and weight standards. Six days after the commanding officer sent his letter, Petitioner returned to full duty status.

i. On 8 December 1997, CMC, MMPR-2 removed Petitioner's name from the selection list vice withholding his promotion for a period of six months as recommended by the commanding officer. Had the promotion been withheld for the six months as recommended by the commanding officer it would have been readily apparent that the seven pounds of weight gain was due to the medication prescribed for his illness.

j. When Petitioner returned to full duty status he was taken off all medications that had been previously prescribed for him and he has not taken any of the medications since. Petitioner quickly conformed to proper height and weight standards and was not assigned to his unit's weight control program. On 16 December 1997, he underwent a physical fitness test (PFT) where he ran 3 miles in 20:58, passed the PFT with a respectable score, and weighed in at 194 pounds, which is three pounds under the maximum weight allowed for his height.

k. Petitioner was relieved of his duties as a Marine recruiter. Because of his medical treatment, he was not able to perform the duties of a canvassing recruiter and it was for medical reasons that he was relieved for the good of the service and not for cause. A limited duty board was asked to determine

whether he should be discharged from the Marine Corps for the good of the service. On the second page of the report the limited duty board noted that he was fully recovered and fit to return to full duty. See enclosure (3).

l. Petitioner believes that but for his unfortunate bout with depression, his name would have remained on the 1997 selection list and he would be a staff sergeant in the Marine Corps today. When his commanding officer wrote the letter of 23 October 1997 requesting the withholding of the Petitioner's name he first discussed Petitioner's depression **before** mentioning weight standards and appearance. This suggests that the removal was based on his brief episode of depression and not physical inability to perform his duties.

m. Petitioner provides numerous letters of recommendation and his most recent fitness report which demonstrates the quality of his work. The letters which he provides are indicative of his work throughout his career in the Marine Corps.

n. As a result of his illness, over which he had absolutely no control, his promotion to staff sergeant was withdrawn and he now faces discharge due to high year tenure. High year tenure for an E-5 on active duty in the Marine Corps is 13 years. Petitioner's active duty base date is 24 February 1987 so he is not eligible to reenlist for additional active duty. He had been selected for promotion to staff sergeant and but for his illness he would not be in this most difficult situation.

o. In correspondence attached as enclosure (4), the office having cognizance over the subject matter involved in Petitioner's application, has commented to the effect that Petitioner's application lacks merit and does not warrant favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record and notwithstanding the comments contained in enclosure (4), the Board finds the existence of an injustice warranting the requested relief. In this regard, the Board concludes that Petitioner's promotion to staff sergeant should not have been withdrawn. Because of depression he was under a physician's care and taking prescribed medication which caused him to become overweight and it was this physical condition that served as a basis for withdrawing his promotion to staff sergeant. The letters from two different physicians show that the gain in weight was through no fault of Petitioner. The Board concludes that he should not suffer the loss of his promotion to staff sergeant. Additionally, it is important to keep in mind that as soon as he was taken off the medication Petitioner quickly came within physical readiness standards and passed the PFT.

Accordingly, the Board recommends the following corrective action.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner was advanced to paygrade E-6 effective 1 November 1997.

b. Any correspondence contained in his service record pertaining to withholding the promotion because of being overweight will be removed from the record.

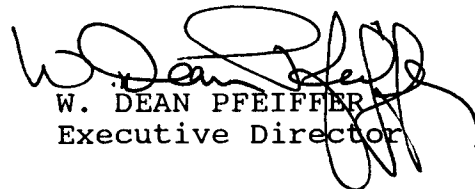
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceeding, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

ROBERT D. ZSALMAN
Recorder


G. L. ADAMS
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Reviewed and approved: OCT 18 1999



CHARLES L. TOMPKINS
Deputy Assistant Secretary
of the Navy for Personnel Programs